

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MARJURITA D. KELLEY, Individually	§	
and as the Representative of the Estate of	§	
D'LISA MICHELLE KELLEY, Deceased,	§	
et al.,	§	CIVIL ACTION NO.
Plaintiffs,	§	
	§	
v.	§	3:16-CV-1015
	§	
THE CITY OF DALLAS et al.,	§	
Defendants.	§	

**DEFENDANT CITY OF DALLAS' NOTICE OF REMOVAL, AND BRIEF IN SUPPORT  
TO THE HONORABLE COURT:**

The Defendant the City of Dallas, ("the City"), pursuant to 28 U.S.C. § 1441, hereby removes Plaintiffs' Texas state district court civil action to the United States District Court for the Northern District of Texas–Dallas Division.

**I. STATEMENT OF FACTS**

1.1 This Notice of Removal is filed within 30 days of receipt of the complaint that first asserts a federal question claim. No properly joined and served defendant opposes removal of this civil action.

1.2 The Plaintiffs filed suit on 7 March 2016 in the 101st Judicial District Court of Dallas County, Texas, Cause No. DC-16-02799.<sup>1</sup> (*See* Index of State District Court Documents ("Index") at Tab 1, Tab 2.) Although not properly served with a citation to appear,<sup>2</sup> the City of Dallas voluntarily filed an answer to the Plaintiffs' state court petition on 11 April 2016. (*See id.*

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<sup>1</sup> The case was transferred from the 101st Judicial District Court to the 162nd Judicial District Court on 23 March 2016. (*See* Index of State Court Documents at Tab 18.)

<sup>2</sup> Plaintiffs purported to serve the City with citation by serving the City Attorney, Warren M.S. Ernst, on 18 March 2016. (*See* Index of State District Court Documents at Tab 3, Tab 24.) The City Attorney is not a person authorized by law to receive service of process on behalf of the City. *See* Tex. Civ. Prac. & Rem. Code § 17.024(b) ("In a suit against an incorporated city, town, or village, citation may be served on the mayor, clerk, secretary, or treasurer.").

at Tab 32.)

1.3 Plaintiffs plead claims arising under 42 U.S.C. § 1983. (*See* Plaintiff’s Original Petition and Jury Demand (the “Complaint”) (Index at Tab 2).) Plaintiffs seek monetary relief. (*See* Complaint.)

## **II. ARGUMENT AND AUTHORITIES**

2.1 Title 28, Section 1441 of the United States Code governs the removal of civil actions from a state court to a federal court. Section 1441(a) provides that:

Except as otherwise expressly provided by an Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

Title 28, Section 1331 of the United States Code describes the federal question jurisdiction of the federal district courts:

The district courts shall have original jurisdiction of all civil action arising under the constitution, laws, or treaties of the United States.

2.2 More specifically, 28 U.S.C. § 1343(a) describes the federal court’s jurisdiction regarding civil rights allegations:

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

\* \* \*

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Title 42, Section 1983 of the United States Code provides a cause of action for the deprivation of civil rights:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

2.3 The present case is properly removed to this United States District Court because Plaintiffs plead claims that fall within this district court's original jurisdiction. Plaintiffs allege claims arising under a federal statute, 42 U.S.C. § 1983. Plaintiffs' allegations therefore present a "federal question" as contemplated by 28 U.S.C. §§ 1331 and 1343. Section 1983 cases filed in state courts may be removed by defendants to a federal district court under 28 U.S.C. § 1441, the general federal question removal statute, because they are cases which could have originally been filed in federal district court. *See Merrell Dow Pharms, Inc. v. Thompson*, 478 U.S. 804 (1986); *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust*, 463 U. S. 1 (1983); and *Great Northern Ry. Co. v. Alexander*, 246 U.S. 276, 281 (1918). Therefore, the City is entitled by statute to remove Plaintiffs' state court action to this United States District Court.

2.4 All defendants that have been properly joined and served consent to the removal of this civil action to this United States District Court. Attached to this notice of removal are the written consents to removal by each properly joined and served defendant.

WHEREFORE, the Defendant City of Dallas requests that this civil action be removed from the 101st Judicial District Court of Dallas County, Texas, to the United States District Court for the Northern District of Texas–Dallas Division.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I certify that on 14 April 2016 I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the CM/ECF electronic case filing system of the court. The electronic case filing system will send a "Notice of Electronic Filing" notification to all case participants registered for electronic notice, including the following *pro se* parties and/or attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

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